IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

MFA.No. 1433 of 2001()

ICA.11/2000 of EMPLOYEES INSURANCE COURT, ALAPPUZHA

APPELLANT: APPELLANT:

HASSAN KUNJU, S/O.ABDUL RAHUMAN,
THAIPARAMBU, CANAL WARD, ALAPPUZHA.

BY ADV. SRI.BEPIN VIJAYAN

RESPONDENTS: RESPONDENT:

THE REGIONAL DIRECTOR,
E.S.I. CORPORATION, NORTH SWARAJ ROAD,
TRICHUR – 20.

BY ADV. SRI.TPM.IBRAHIM KHAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.T. SANKARAN, J.

M.F.A.NO. 1433 OF 2001

Dated this the 11th day of December,2006

JUDGMENT

This appeal arises out of the judgment in I.C.A.No.11 of 2000, on the file of the Employees' Insurance Court, Alappuzha. That was an appeal filed by the appellant herein under Section 54(A)(2)(ii) of the Employees' State Insurance Act, 1948. The claim of the appellant is that he is entitled to get 100% total permanent disablement benefit.

2. The appellant is an insured employee attached to the COIR FED, Alappuzha. He was engaged in loading and unloading work. On 26.11.1998, while he was working in the factory premises, the roof of the building collapsed and fell on his body. It is contended that he sustained injuries. He was treated at the Employees

State Insurance Hospital and Medical College Hospital, Alappuzha. It was contended that at the time of filing the appeal before the Insurance Court, he was continuing treatment. The appellant contended that he was incapacitated from doing work.

3. On 28.2.2000, the appellant appeared before the Medical Board. The Medical Board examined him and assessed his loss of earning capacity at 4%. The Medical Board consisted of the Superintendent of E.S.I.Hospital, Alappuzha, The Regional Deputy Director of Insurance Medical Services, Ernakulam and the Orthopaedic Surgeon of E.S.I.Hospital, Udyogamandal. The contention of the appellant is that the assessment of the Medical Board is arbitrary and unsustainable. It has come out in evidence that the appellant had met with four accidents earlier and he was awarded loss of earning capacity at the rate of 7%, 40%, 20% and

8%, totally 75%. The Insurance Court took into account the documentary and oral evidence in the case in detail and held on evidence that the decision arrived at by the Medical Board was proper. The Insurance Court held that it cannot be believed that the appellant has become totally disabled on account of the employment injury sustained by him on 26.11.1998. The appellant has not made out, the Insurance Court held, that the loss of earning capacity assessed by the Medical Board is vitiated in any manner. I do not find any illegality or irregularity in the judgment passed by the Insurance Court. No grounds are made out for interference.

4. Learned counsel for the respondents submitted that the appellant is still continuing in service and, therefore, the dictum laid down in **Ramakrishnan** v. **E.S.I.Corporation** (2000 (2) KLT 538) would apply. It was contended that as held in

Ramakrishnan's case (supra), the disablement benefit cannot be granted so long as such disability did not affect the employment of the employee concerned.

For the aforesaid reasons, the appeal lacks merits and it is accordingly dismissed. No order as to costs.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

M.F.A.NO. 1433 OF 2001

JUDGMENT

11th December, 2006